

UGANDA / JUDGMENT

Tusabe v Asasira (HCT-01-CV-CS 21 of 2017) [2023] UGHCCD 201 (28 April 2023)

[2023] UGHCCD 201

COURT

HC: Civil Division (Uganda)

BEFORE

Mugabo, J

CASE / FILE NUMBER

HCT-01-CV-CS 21 of 2017

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT FORT PORTAL****HCT-01-CV-CS-021 OF 2017****TUSHABE CHRIS KAROBWA:..... PLAINTIFF****VERSUS****ANNET ASASIRA :.....DEFENDANT****BEFORE: HON. JUSTICE VINCENT EMMY MUGABO****JUDGMENT**

The Plaintiff sued the Defendant in the tort of defamation, to wit, slander. The plaintiff prayed for a permanent injunction, general damages, punitive damages, aggravated damages, interest and costs. By a written statement of defence, the Defendant denied the claim and stated that the plaintiff was witch-hunting her.

At the time of the alleged slanderous words, the plaintiff was the patron of Nyekundire Savings and Credit Cooperative Organization (the SAACO) in Kasenda Sub County in Kabarole district and the defendant was serving as the SACCO secretary. The plaintiff claims that the defendant, while at the SACCO meeting chaired by the Deputy Resident District Commissioner, the defendant stated that "Chris Tushabe is responsible for the closing of Nyekundire Savings and Credit Cooperative Organization because he stole from the SACCO the sum of UGX 5,000,000/= which he failed to pay back."

The plaintiff also claims that while at the offices of Kabarole Research and Resource Centre (KRC), the defendant stated that the plaintiff had caused the closure of Iruhuura Organic Farmers Project, in the presence of various KRC employees including one Annet Kiiza. Further that the same statement was made by the defendant during her election campaigns in 2015 to become a district councilor.

The plaintiff avers that the said statements were false and slanderous to his good reputation. He states that he had greatly contributed to the formation of the SACCO, provided premises for the same, single handedly paid its debts, and legal fees in cases where the SAACO was a party. He also avers that he had contributed to various philanthropic causes which were officially recognised by Kabarole District council. He is a well-known public figure and established himself as a person of good reputation which the defendant has destroyed. The plaintiff also read the New Vision Newspaper of 18th May 2016 in which the defendant was quoted to have mentioned the aforementioned slanderous statements.

Representation and hearing

The plaintiff is represented by Mr. Kasigazi Francis of Acellam Collins & Co. Advocates while the defendant is defendant is represented by Mr. Musinguzi Bernard of Kayonga, Musinguzi & Co. Advocates.

The plaintiff led evidence of three witnesses. The plaintiff as PW1, Kamugisha Vincent as PW2 and Rwageya Theodore Biryaho as PW3. The defendant also led evidence of three witnesses. Herself as DW1, Tukahirwa Evas as DW2 and Asingwire Samuel as DW3.

The hearing proceeded by way of witness statements and cross examination. Counsel for the plaintiff has also filed written submissions which have been considered herein.

At scheduling, the following issues were raised for determination by court:-

1. Whether the defendant made utterances that were defamatory to the plaintiff

2. Whether the defendant published or caused the publication of statements that were defamatory to the plaintiff

3. What remedies are available to the parties?

The plaintiff's claim is in slander. It is well known that Slander applies to defamation made in a transitory form, such as spoken words, or gestures. As such, issue 2 framed above relating to publication of the statements is redundant and it is accordingly struck out.

Burden and Standard of proof

The burden of proof is upon the Plaintiff to prove his case on a balance of probabilities. **Section 101, 102 and 103 of the Evidence Act** provide that he who asserts a fact must prove it. Whoever desires any court to give the judgment as to any legal rights or liability dependent on the existence of the fact which he or she asserts must prove that fact exists.

The court has to be satisfied that the Plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that, the more probable conclusion is that for which the Plaintiff contends, since the standards of proof is on the balance of probabilities /preponderance of evidence (see *Lancaster Vs Blackwell Colliery Co. Ltd 1982 WC Rep 345* and *Sebuliba Vs Cooperative Bank Ltd (1982) HCB130*)

Court's determination

Issue 1: whether the defendant made utterances that were defamatory to the plaintiff

Winfield & Jolowicz Sweet & Maxwell 19th Edition 2014: 360 defines defamation as the publication of a statement that tends to lower a person's reputation in the minds of right thinking members of society or tends to make them shun and avoid him. The test for evaluating whether a statement is defamatory is that of a reasonable person. Winfield et al (supra) opines that:

"The reasonable person is a layman not a lawyer and the judge must put himself or herself in the position of someone who may be guilty of a certain amount of loose thinking and who may not reflect fully and carefully upon a newspaper story or a television program."

The court has to determine first the common usage and meaning of the words. Second, the court examines whether the statement can be verified as a fact. Third, the court reviews the context of the statement to check if it is an opinion and lastly, the court examines the broader context of the statement such as where it was placed in the newspaper.

PW1 stated that on a day he can't recall, he received a call from one Kamugisha Vincent, the Deputy Resident District Commissioner asking him about the loan of UGX 5,000,000/= the plaintiff had allegedly taken from the SACCO and never paid back as alleged by the defendant. The plaintiff confirmed that the allegation was false. Annet Kiiza, an employee of KRC also telephoned the plaintiff asking him whether the plaintiff had caused the closure of Iruhuura Organic Farmers Project as alleged by the defendant. He received calls from various people during the campaigns leading up to the 2016 election from people telling him that the defendant was telling people that the plaintiff had failed to pay back a loan of UGX 5,000,000/= that he had taken from the SACCO which led to the SACCO's collapse. PW1 stated that the allegations above were malicious and intended to destroy his reputation before the right thinking members of the society.

The plaintiff also referred to Pexh1, a New Vision Newspaper article of 18th May 2016 where the defendant was quoted to have made the statements earlier alluded to. During cross examination, he confirmed that the article was published not by the defendant but by an employee of New Vision.

PW2 stated that he was the Deputy Resident District Commissioner of Kabarole district in 2014. He chaired the SACCO meeting where the defendant reported that the plaintiff had taken a loan of 5,000,000/- and failed to pay it back and this is the reason that he SACCO was not performing. PW2 knew the plaintiff as a person of good reputation and had contributed to the development of the community. In the said meeting, the defendant is also said to have reported that the SACCO would only regain its performance if the plaintiff paid back his loan. PW1 did not see any documentation for the loan and the members exhibited ignorance of the said loan transaction.

During cross examination, PW2 stated that they did not take formal minutes of the meeting where the defendant is said to have uttered the words.

PW3 knew that the plaintiff was a religious man who had contributed to the revival of the SACCO when it initially collapsed. He recalls that in 2014, he was a member of the SAACO and the defendant came to him collecting signatures to submit to the Deputy Resident District Commissioner to explain to the said RDC that the collapse of the SACCO was caused by the plaintiff who had failed to pay back his loan to the SACCO. By the time the defendant approached PW3, about sixteen people had appended their signatures.

The defendant testified that PW2 chaired the SACCO meeting to revamp the SACCO but denied ever making the impugned statements against the plaintiff. She stated that she has never spoken to any New Vision correspondent called Geoffrey Mutegeki as alleged. She also stated that she did not mention the impugned words against the plaintiff on her campaign trail as alleged or to any other person.

DW2 stated that she was a member of the SACCO and that she attended the meeting chaired by PW2. She states that the defendant did not mention the alleged words against the plaintiff. DW2 also attended the defendant's campaign trail but that the defendant did not at any time mention the alleged words against the plaintiff during the campaigns. During cross examination, DW2 stated that she attended about two or three of the defendant's campaign meetings and not all of them. She also confirmed that the house where the SACCO premises were located belonged to the plaintiff.

DW3 stated that he is the chairperson of the SACCO. He attended the meeting chaired by the PW2 but that the defendant did not at any time during the meeting mention the defamatory words against the plaintiff. He stated that they took formal minutes of the meeting and signed an attendance. The minutes were not exhibited in court. During cross examination, he stated that he stated that he did not know that he was required to attend the SACCO meeting Chaired by PW2.

In his submissions, counsel for the plaintiff argued that for the plaintiff to succeed on a case of defamation, he must prove that the words complained of are defamatory, that they refer to the plaintiff, and that they were maliciously published by the defendant. He relied on the case of A*. K. Oils & Fats (U) Ltd Vs Bidco Uganda Ltd HCCS No. 715 of 2005*. Although this case dealt with libel and not slander as in the present case.

For a claim in slander, the plaintiff must plead that; (a) the defendant made a false and defamatory statement concerning the plaintiff, (b) the defendant made an unprivileged publication of that statement to a third party, and (c) except where the slander is actionable *per se*, the plaintiff must plead and prove damage. For a statement complained of as being defamatory, the actual words must be set forth verbatim in the plaint and the persons to whom publication was made have to be mentioned in the plaint (see *Rutare S. Leonidas Vs Rudakubana Augustine & Kagame Eric William [1978] H. C. B. 243*).

In the instant case, the plaintiff in paragraph 4 (d), (f) reproduced verbatim the utterances complained of that are attributed to the defendant, as follows; ""*Chris Tushabe is responsible for the closing of Nyekundire Savings and Credit Cooperative Organization because he stole from the SACCO the sum of UGX 5,000,000/= which he failed to pay back*." The defendant and her witnesses all denied that she never made any such utterances to anyone anywhere.

When two people tell different stories or where it is a situation of one's word against another, the Court can use common sense, reasoning and surrounding circumstances to figure out what happened or to determine that one story should probably be more believable than the other.

It would be self-defeating for the plaintiff to publish statements that would led to his own reputation damage. The publication contained in **Pexh1** appears to have been an honest publication by the New Vision correspondent based on information obtained from the defendant. Why else would he publish the same? Find the evidence of the plaintiff is more believable in as far as determining whether the defendant made the said statement is concerned. **PW2** was the chairperson of the meeting where

the said statements were uttered. He heard them and decided to confirm them through a phone call to the plaintiff. Later, the same statement was allegedly said to have been uttered to the New Vision correspondent as captured in **Pexh1**.

In a suit for slander, a plaintiff has to prove that the relevant statement is defamatory, but he or she does not have to prove that it was a lie. If a statement is defamatory, the court will simply assume that it was untrue. The test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feeling of other persons. In **Gatley on Libel and Slander (9th edition)** where (at p 7 para 1.5) the learned authors state:

*What is defamatory? There is no wholly satisfactory definition of a defamatory imputation. Three formulae have been particularly influential: (1) would the imputation tend to "lower the plaintiff in the estimation of right-thinking members of society generally?" (2) Would the imputation tend to cause others to shun or avoid the plaintiff? (3) Would the words tend to expose

the plaintiff to "hatred, contempt and ridicule?" The question "what is defamatory?" relates to the nature of the statement made by the defendant; words may be defamatory even if they are believed by no one and even if they are true, though in the latter case they are not of course actionable.*

In **Ssejjoba Geoffrey Vs Rev. Rwabigonji Patrick [1977] H. C. B 37** a defamatory statement was defined as one which has a tendency to injure the reputation of the person to whom it refers by lowering him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike and disesteem. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed.

A defamatory utterance therefore is one which imputes conduct or qualities tending to disparage or degrade any person, or to expose a person to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade or society perception. It is a statement which tends to lower a person's reputation in the eyes of or the estimation of right thinking members of society generally or which tends to make them shun and avoid that person. The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty. The person defamed does not have to prove that the words actually had any of these effects on any particular people or the public in general, only that the statement could tend to have that effect on an ordinary, reasonable listener.

The categories of statements that constitute slander **per se** include (i) imputing to another a criminal offense; (ii) imputing to another a presently existing venereal disease or other loathsome and communicable disease; (iii) imputing to another conduct, characteristics or a condition incompatible with the proper exercise of his lawful business, trade, profession, office or good standing in society. In a suit premised on slander **per se**, damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case, the requirement of a showing of actual damages as a basis of an award for damages is satisfied by the presumption of injury which arises from a showing of slander that is actionable **per se**. The fact that the slanderous statements in the instant suit imputed a misappropriation of funds, entitle the plaintiff to an award of general damages.

Even if the defendant's words were found not to be actionable **per se**, the plaintiff and his witnesses testify that the plaintiff is a person of good

reputation who has contributed to various philanthropic causes, a religious man who in fact contributed to the revival of the SACCO. At the time the alleged statements were made, the plaintiff was the patron of the SACCO and a member of the board who ought to give it strategic direction for sustainability. Making an allegation against him like the defendant did would surely bring his person into disrepute and therefore defamatory.

Issue 1 is answered in the affirmative. The defendant made defamatory statements against the plaintiff.

Issue 2: Remedies

The plaintiff prayed for a permanent injunction, general damages, punitive damages, aggravated damages, interest and costs.

General damages

General damages are such as the law will presume to be the natural and probable consequences of the defendant's words or conduct. They arise by inference of law and need not, therefore be proved by evidence. If words have been proved to be defamatory of the plaintiff, general damages will always be presumed. A person's reputation has no actual value, and the sum of be awarded in damages is therefore at large and the Court is free to form its own estimate of the harm taking into account all the circumstances (see **Khasakhala v Aurali and Others* [1995-98]1 E. A. 112*).

General damages are to be determined and quantified, depending upon various factors and circumstances. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behavior of defendant and plaintiff. In **Kanabi v Chief Editor Ngabo Newspaper and others **, the Supreme Court commented as follows;-

It is not enough to consider the social status of the defamed person alone in assessing award of damages. It is necessary to combine the status with the gravity of or the seriousness of the allegations made against the Plaintiff. Anyone who falsely accuses another of a heinous crime should be condemned heavily on damages. Once an ordinary person is defamed seriously and is shunned by the public then it does not matter whether he or she is of high or low status.

In **David Kachontori Bashakara v Kirunda Mubarak, H. C. C. S No. 62 of 2009**, general damages of UGX 45,000,000/= were awarded to a plaintiff who had been a public servant for a period of 33 years and had during the course of his service been to various parts of Uganda. He had a family of seven mature children and lots of friends in many parts of the country who were saddened and scandalized by the utterances complained of. (the words were "corrupt, thief, embezzler, unfit to hold public office") and broadcast in many parts of the country where the language is understood. He had as a result lost the Mayoral race in Mbarara.

In the present case, counsel for the plaintiff argued that the defamatory words were even published in the New Vision, a newspaper of wide circulation and readership. As such, the plaintiff's reputation was greatly damaged. Counsel did not guide court on the quantum of general damages.

I have considered the gravity of the allegation. The plaintiff was accused of misappropriating the SACCO funds leading to its collapse. The people who got to know of the allegation are uncountable owing to the fact that the allegation featured in a newspaper of wide circulation. On account of all those factors, I am of the view that an award of UGX 20,000,000/= in general damages would be adequate compensation to the plaintiff.

Punitive Damages

The plaintiffs also sought punitive or exemplary damages for unlawful arrest and detention and malicious prosecution.

Punitive damages are intended to punish the defendant for the wrong done to the plaintiff and for acting as a deterrent. See **Rookes vs Barnard & Others [1964] AC 1129**

In the case of **Obongo Vs Municipal Council of Kisumu [1971] EA 91** the court held that; "**It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive.**"

I don't find any justification for the award of punitive damages and this prayer is therefore declined. The plaintiff has not shown that the conduct of the defendant was high handed.

Injunction

A permanent injunction is issued against the defendant restraining her from defaming the plaintiff.

The other reliefs claimed will not be granted to the plaintiff.

Consequent to the resolution of the issues above, this suit therefore succeeds and I make the following orders;

- a. The plaintiff is awarded general damages in the sum of UGX 20,000,000/= against the defendant
- b. A permanent injunction is issued against the defendant restraining her from defaming the plaintiff.
- c. Costs of the suit are awarded to the plaintiff

It is so ordered

Dated at Fort Portal this 28th day of April 2023. .

Vincent Emmy Mugabo Judge

The Assistant Registrar will deliver the judgment to the parties

Vincent Emmy Mugabo

Judge

28th April 2023.

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